

Sandberg & Lipin, "Bell Atlantic and GTE Agree on a Merger," Wall Street Journal, July 28, 1998, p. A3, A11 (reporting and quoting statement by Reed Hundt). This merger is an essential step in bringing about such LEC to LEC competition.

B. National and Global Markets for Full-Range Telecommunications Services

Focusing on the broader picture, this merger will directly improve competition in the developing national and global markets for a full range of bundled telecommunications products and services by creating a strong new player to compete with the likes of MCI/Worldcom/MFS/UUNet, AT&T/TCI/Teleport, and Sprint/Deutsche Telekom/France Telecom. Indeed, a principal motivation for the merger is to enable the combined company to become a truly national provider of bundled services.

Today, in the United States, Bell Atlantic is limited to the Northeast, while GTE is dispersed almost entirely outside that area, serving primarily suburban and rural customers and a few major urban centers. Together, in contrast, the two companies achieve a nationwide footprint that includes the urban areas and financial centers of the Northeast and key locations in or near the territory of every other RBOC. The combined company will have wireline local-service assets in 81 of the top 100 local telephone markets, as well as an expanded footprint on the wireless side. Internationally, moreover, the merger will combine complementary assets in Europe, Asia, Canada, and Latin America. The national presence and global reach of the company, together with its rich resources in advanced data services, will add another competitor to the small number of firms able to meet the growing demand for "seamless" full-service offerings across far-flung distances.

The Commission has several times recognized the increasing importance of the ability to offer a bundle of telecommunications services. See, e.g., Bell Atlantic-NYNEX ¶¶ 39, 52; SBC-

PacTel 12 F.C.C.R. 2624 ¶ 48, n.94 (1997). It also has recognized the emergence of a "global seamless services" market. See BT-MCI II ¶¶ 56-57.⁴ This market, the Commission has explained, is limited to "only a handful of major competitors world-wide," "[c]ompetition in these markets requires significant resources, which must extend throughout the world." Id. ¶¶ 91, 130. The Commission relied on the "pro-competitive effect" of this same global seamless market in approving British Telecom's initial investment in MCI, BT-MCI I, 9 F.C.C.R. 3960, ¶ 51 (1994), and separately has explained that "global telecommunications markets have begun to shift from the traditional model to a more competitive market structure of multiple national carriers and international alliances," Policy Statement on International Accounting Rate Reform, 11 F.C.C.R. 3146, ¶ 6 (1996).

The emergence of these national and global markets where firms provide a full range of telecommunications services has been recognized by the small number of firms currently assembling the capabilities to be participants.⁵ For example, MCI and WorldCom touted the pro-

⁴ In 1996, the Commission approved the investment of Deutsche Telekom and France Telecom in Sprint on the basis of its conclusion that "[g]lobal seamless services is an emerging product market of worldwide geographic scope. . . . At present, the product dimension of this market consists of a combination of voice, data, video and other telecommunications services that are offered by a single source over an integrated international network of owned or leased facilities, and that have the same quality, characteristics, features and capabilities wherever they are provided. This end-to-end service offers the advantage to customers of 'one-stop shopping' and single-source billing. The principal customers are high-end users such as multinational corporations, but individuals and carriers may also be customers." Sprint Corp., 11 F.C.C.R. 1850, ¶ 84 (1996).

⁵ The definition of a market and the identification of who participates in the market both properly take account of the perceptions of the competitors themselves, because those perceptions largely determine what competitive threats influence firms' pricing and other decisions. See, e.g., 1992 Horizontal Merger Guidelines §§ 1.11, 1.21 (market definition); 1984 Vertical Merger Guidelines § 4.11 ("perceived potential competition"); FTC v. Freeman Hospital, 69 F.3d 260, 269-70 (8th Cir. 1995).

competitive benefits of its "plan to become the first truly global end-to-end competitive carrier." WorldCom/MCI Joint Reply, CC Docket No. 97-211, at 55 (January 26, 1998).⁶ AT&T has recently defended its announced venture with British Telecom: "Through the venture, AT&T and BT aim to be the undisputed leader in the fast-growing global communications services market. The venture, together with partners around the world, will provide an outstanding range of global services far greater than either AT&T and BT could provide alone or with their current alliances."⁷ SBC's chairman recently testified to Congress: "Consumer demand is transforming the market for telecommunications services into a global marketplace, where ultimately there will be a limited number of integrated global companies competing with an increasing multitude of regional, national and local companies. SBC's strategy is to be one of those U.S. based global

⁶ "MCI and WorldCom believe that the merger will yield significant benefits for the companies' customers and U.S. consumers generally. A driving force behind the merger of MCI and WorldCom is the desire to create the first truly global end-to-end competitive carrier. As a fully integrated company, MCI WorldCom will offer a complete range of local, long distance, wireless, and international communications services. The merged company plans to move as aggressively as regulatory conditions permit to offer competitive choices to consumers on a global scale. By combining the expertise and resources of the two companies, MCI WorldCom will be a strong and efficient competitor to incumbent carriers world-wide." WorldCom/MCI Joint Reply at 55.

⁷ AT&T, Global Venture Fact Sheet (1998) <<http://www.att-bt-globalventure.com/news/factsheet.html>>; "[M]ultinational companies are reaching out and going global and they want that reach to be immediate with the same support and the same services. . . . we're investing in our network, domestically; we're investing in the consumer business with the TCI and the broadband approach; and we're investing for global reach as well. And all those investments . . . have a common theme and that is that we're investing our own facilities and we're doing that so we can bring a consistent and universal service around the world." Interview with Michael Armstrong, AT&T CEO, Moneyline, CNNFN, Transcript #98072700FN-L10, July 27, 1998; "If you want to be a successful player in the global market, going it alone is not a serious option. . . . The size of the global opportunity has brought both BT and AT&T to a common conclusion that partnership is key — to spread the cost, to bring to bear complementary expertise and research and development, to make sure we can reach further and better than we can alone to meet our customers' needs." Speech by Sir Peter Bonfield, CEO, British Telecom, (June 25, 1998) <<http://www.att-bt-globalventure.com/news/presentations.html>>.

telecommunications companies"⁸ And, as early as 1994, Sprint told the Commission: "In today's international telecommunications environment, customers increasingly demand that their service provider be able to furnish seamless, end-to-end services on a worldwide basis, with consistent standards of quality and service functionality regardless of where the call is originated or terminated."⁹

The view of the market participants — both as to the increasing importance of the kind of scope and scale the present merger will create and the limited number of current firms able to meet the increasing demand — is confirmed by outside analysts. As one Wall Street telecommunications analyst recently explained:

[T]he telecom world . . . will evolve to the point where there are six or so fully integrated players. They'll offer end-to-end connectivity to serve business users. They'll all have assets in the top financial centers globally. They'll have long-haul optical fiber in important corridors like North America and Western Europe. In the Pacific Rim, they'll have strategic hubs in Tokyo, Hong Kong, Singapore and Sydney, and undersea fiber cable to connect the dots, so to speak. They'll also have an Internet backbone to provide sophisticated broadband data services to business customers. Such large-cap fully integrated players will create value on an ongoing basis. . . . [O]nly one of them exists today, and it's WorldCom.

Jack Grubman, Salomon Smith Barney, quoted in "Barron's International Telecom Forum: Right Numbers: Our Experts Pick the Likely Winners in the Global Telecom Wars," Barron's, May 18, 1998, at 35.

⁸ Testimony of Edward E. Whitacre, Jr., Chairman and CEO, SBC Communications, Inc., before the Antitrust, Business Rights, and Competition Subcommittee, Senate Judiciary Committee, May 19, 1998. A central theme of SBC and Ameritech's pending merger application is that they view the marketplace for large and medium businesses as ever more national and global in scope.

⁹ Sprint Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, at 17-18 (File No. ISP-95-002, Oct. 14, 1994).

Neither Bell Atlantic nor GTE would alone be as strong a competitive force in these markets as the combined company. GTE has little presence in the major East Coast business centers and, more generally, a weak presence among large businesses. Bell Atlantic has virtually no presence outside the Northeast. The merger allows the combined company to capitalize on the new business-rich, high-density, geographically complementary customer base. As one analyst explained, "[c]ombining with GTE sharply enhances Bell Atlantic's product portfolio" — not just GTE's long-distance experience and assets but "GTE's internetworking capabilities and national data network." Nationsbank Montgomery, Bell Atlantic, Inc., July 29, 1998.

As already noted in discussing local service, the national coverage will allow the combined company to compete more effectively for the business of a host of firms that have offices both in Bell Atlantic's region and near to GTE's franchise areas across the rest of the country. For these and other customers, moreover, new and improved services and multi-product offerings will be made possible by the combination of advanced data capabilities, long-distance experience, and established business relationships. The additional scale of the merged company will allow for development of a national brand (by justifying national advertising), as well as faster and wider build-out of new national data and long distance networks (including by adding otherwise-unjustifiable touch-down points) and other facilities (such as data centers for speedier Internet access). See Declarations of Jeffrey Kissell, John Curran, and Debra Covey.

Internationally, moreover, the two companies have a range of complementary, non-overlapping interests that will make the merged firm a stronger competitor in international

markets. See International Map, attached as Exhibit 2.¹⁰ GTE's international interests are concentrated in the Americas, while Bell Atlantic's interests include a wireless venture in Mexico and otherwise are focused on Europe and Asia. These varying interests — tied together with the complementary assets of Bell Atlantic's fiber optic loop around the globe, or "FLAG," that extends from London to Japan and GTE Internetworking's overseas assets — provide a foundation for more efficient international services to compete with the global providers now being formed.¹¹

All of these factors will be mutually reinforcing. This merger presents an even stronger version of what the Commission recognized in WorldCom-MCI as a pro-competitive benefit: the enhanced ability of the merging parties to serve "multi-location customers over their networks," enabling "such customers to receive higher quality and more reliable services."

WorldCom-MCI ¶ 199. The present merger will create a truly national, reliable provider of an

¹⁰ "On the international front, GTE is oriented towards the Americas: its operations stretch from British Columbia and Quebec in the north, to the Dominican Republic, Puerto Rico and Venezuela to the south. GTE also has major traffic termination agreements in the Pacific Rim." Shawn Burke, Bell Atlantic To Merge With GTE Corp., PaineWebber Fixed Income, July 29, 1998. Bell Atlantic's "portfolio of international communications properties is dominated by its wireless investments in Mexico, Italy, Greece, Slovakia and the Czech Republic. Its wireline telephone investments include properties in the UK, Thailand, Indonesia, the Philippines, and a UK-Japan undersea fibre optic cable." Id. Moreover, the assets of FLAG and GTE Internetworking "creates a 'global and domestic network barter currency' that should make it possible for GTE and Bell Atlantic to negotiate for network capability where [their] networks presently do not extend." Nationsbank Montgomery, Bell Atlantic, Inc., July 29, 1998.

¹¹ In U.S. markets for international message telephone services and international private line services, the merger can only have positive effects as well. AT&T, MCI WorldCom, and Sprint dominate those markets, and GTE and Bell Atlantic have very small shares. See Federal Communications Commission, "Trends in the U.S. International Telecommunications Industry," Table 21: Market Share Based on Net Revenue from International Services by Carrier (Aug. 1998). The merged company will be a stronger competitor in the markets for U.S.-originating international long-distance traffic.

ever-increasing range of telecommunications services, adding much-needed choice to the burgeoning national and global full-service markets.

C. Advanced Data Services

The merger also will have a profoundly pro-competitive effect on the critical markets for Internet and advanced data services, most particularly in the concentrated market for Internet backbone services, where it will strengthen GTE as a competitor of the three dominant backbone providers. See WorldCom-MCI ¶ 148.

The proceedings that examined the merger of WorldCom and MCI — in this Commission as well as before the U.S. and European antitrust authorities — have made clear that the market for Internet backbone services is already concentrated and today is dominated by the three largest players: MCI WorldCom, the successor to the MCI backbone (Cable and Wireless), and Sprint. AT&T also is on the verge of joining this top rank of Internet backbone providers. In contrast, GTE Internetworking (formerly BBN) currently is a distant fourth to the largest backbone providers and is largely dependent on capacity leased from other carriers (primarily MCI WorldCom).

Because the value of each backbone's network increases as the number of customers on the network increases, unilateral growth of any one of the three largest backbones will push more and more customers to that network, creating a snowball effect. This possibility is enhanced by placing the MCI backbone in Cable and Wireless's hands: because that backbone is exceedingly hard to extricate from MCI's other operations, Cable and Wireless may be distinctly hobbled in its ability to compete with the other dominant backbones. Today, moreover, the major Internet backbones exchange traffic through peering arrangements, under which the major backbone providers do not charge one another to exchange traffic. But these arrangements only work

where the backbones handle roughly comparable traffic volumes. If one of the backbones were to grow significantly larger than the others, its competitors would become dependent on the larger backbone, and it could refuse to continue the existing peering arrangements.

The threat posed by the existing concentration among the top tier of Internet backbones will be materially alleviated by strengthening GTE's backbone. This result will flow directly from its combination with Bell Atlantic and the ability to market to Bell Atlantic's urban, high-density, business-rich customer base by taking advantage of its marketing and distribution channels. This will enhance the volume of data and Internet traffic carried over the backbone, and the number of valuable Web sites and customers connected to the backbone, can be more readily increased. See Declaration of John Curran. By doing so, moreover, the merger will accelerate GTE's transition of its backbone onto its own facilities, and away from dependence on other competitors such as MCI WorldCom.

More broadly, the combination of Bell Atlantic and GTE will feed businesses and consumers hungry for an ever-expanding range of advanced data services. Bell Atlantic currently has limited experience and presence in Internet and data-services markets. GTE, through GTE Internetworking (formerly BBN), is one of the leaders in developing and selling such services, but it lacks critical high-density customer bases to deploy many such services as soon as they are technologically available. The merger of the two companies will give each what it currently lacks alone.¹²

¹² See Nationsbank Montgomery, Bell Atlantic, Inc., July 29, 1998 ("GTE will give Bell Atlantic the applications and the national network to offer high bandwidth packet data-based applications and products. . . . GTE has one of the most sophisticated suites of offerings in the web hosting business.")

For example, amidst the 4,000-6,000 Internet service providers serving tens of millions of customers, Bell Atlantic and GTE today have very modest Internet Service Provider offerings to consumers: GTE.net has 600,000 customers, whereas BellAtlantic.net has only about 160,000. Their role in the market is far too small for the merger to raise any competitive concerns. On the other hand, these businesses will immediately achieve important cost savings from the scale provided by a combination of customer bases. These businesses require a scale well above Bell Atlantic's and even GTE's customer base to successfully compete. And, even beyond such minimum scale, substantial efficiencies are gained by eliminating a raft of otherwise duplicative costs, including mail systems, news groups, hardware purchases, marketing, billing, customer assistance and the like.

In addition, customers will see more rapid deployment of innovative services as a result of the combination of GTE's expertise and experience in the area with Bell Atlantic's customer base and well-established marketing and distribution channels. GTE's lack of an adequate high-density customer base in, for example, Boston, New York, Newark, Philadelphia, Wilmington, Baltimore, metropolitan Washington, DC, and Richmond has impaired its ability to roll out new services. Examples of already-developed services include:

Cyber-ID, which allows a recipient of a call, when connected to an Internet Service Provider, to choose among responses to the call: to send a busy signal; to direct the call to voice mail or to a second line; or to answer using a voice-over-IP connection.

Site Patrol, which allows customers to protect their Internet connections from hackers.

Universal Messaging, which allows customers to have voice, fax, and e-mail messages all sent to a single computer-accessible mailbox.

These services require significant capital investments to deploy that are not justified without access to the kind of customer base that Bell Atlantic will supply; after the merger, the combined

company will be in a position to roll these types of services out where they previously were not justified. The roll out of such new products and services will, in turn, create demand among consumers, causing new markets to develop, and new competitors will enter in response.

The higher customer density also will permit the combined company to create more data centers to host Web sites that are located closer to customers: the result will be both faster and more efficient use of the Internet. The merger, by combining the new customer base with the GTE expertise, will make it possible to proliferate data centers, introduce beneficial new services, and speed and enrich user access to information over the Internet. The result is strongly pro-consumer and also pro-competitive, as competitors are spurred to speed their own innovations. See Declaration of John Curran.¹³

E. Domestic Long Distance

The merger will produce similar pro-competitive benefits in the domestic general long-distance market. See SBC-PacTel ¶ 74 (recognizing that long-distance competition can be improved by a combination of two regional local exchange carriers).

Today, there are only three facilities-based long distance networks that are truly national in reach: AT&T, MCI WorldCom, and Sprint. While some competing network providers are

¹³ Accordingly, to the extent that the merger involves "vertical" integration of local-exchange inputs and downstream data services, the merger is powerfully pro-competitive. Far from adversely affecting competition in the downstream data markets (see AT&T-TCG ¶ 42), the merger will improve competition and services in those markets. The Commission's regulations protect information service providers' access to local exchange basic services, and there is no evidence of downstream market abuses by Bell Atlantic or GTE on behalf of their information service provider affiliates. In particular, the Internet Service Provider affiliates of the two companies, far from achieving dominance because of the LEC affiliation, have played only a small role in the highly competitive ISP marketplace. The merger creates only benefits, not problems, insofar as it vertically integrates downstream data services with local exchange services.

entering the market, their focus is on serving the top urban centers rather than on deploying a network providing ubiquitous service to all markets nationwide. Moreover, while GTE plans, over time, to migrate some of its long distance traffic onto its own planned long distance network, GTE's customer base alone will not generate sufficiently large volumes of long distance traffic to achieve the economies necessary to deploy a fully national long distance network.

The current merger, however, will accelerate the new company's ability to construct and operate a national long distance network to compete against the Big Three. Traffic volumes critically affect how quickly switches, electronics, and other facilities are added to expand both the geographic reach and the voice and data capacities of the network. See Declaration of Debra Covey.¹⁴ The increased traffic made possible by this merger will lead to the deployment of such facilities on a schedule, and in areas, not otherwise possible. Significantly, one of the premises of the Commission's recent approval of the MCI WorldCom merger — between the number two and number four firms in the long-distance market — was the emergence of new facilities-based competitors. See WorldCom-MCI ¶¶ 36, 51. This merger helps to make that premise a reality and, more generally, enhances long-distance competition by spurring the development of a much needed fourth national network.

Likewise, once the combined company is permitted to enter the long-distance market in Bell Atlantic's states, the entry will be faster and stronger by virtue of its having access to GTE's experience over the last several years in the business. It will also be more efficient, as many otherwise-redundant startup and operational costs can be avoided. The result will be a greater

¹⁴ Bell Atlantic hopes to have needed Section 271 approvals by the time this merger closes. If that process is not complete, applicants will request any necessary transitional relief from the Commission.

ability to offer lower prices or better services as the merged firm fights the three main incumbents to attract customers. Consumers will benefit directly, and the incumbent long-distance providers will have to innovate, lower prices, and otherwise improve service to stay competitive.

F. Wireless

The merger also is pro-competitive in wireless markets, where it will create a stronger and more efficient wireless competitor with substantially greater coverage in a market where national coverage is increasingly important.

With relatively small exceptions, the wireless service areas of the two companies are complementary. See Wireless Map, attached as Exhibit 3. Moreover, both companies use highly compatible CDMA technology. As a result, bringing the businesses together will create a much more geographically extensive wireless system to compete with the several other national or near-national systems like AT&T Wireless, Sprint PCS/Spectrum, NexTel, and SBC/Ameritech.¹⁵

¹⁵ Historically, the Commission has defined the relevant product market as one for "interconnected mobile phone service," and has considered the geographic markets as being "relatively localized." Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc., 13 F.C.C.R. 8891, 8906-8907 (1997). As the Commission itself has recognized, however, the rapid growth in available spectrum in recent years has produced an increase in the spectrum that can be put to a host of competing uses. Moreover, the formation of national (or near national) competitors has led to the development of a market that is increasingly national, rather than local, in scope. Nonetheless, given the Commission's historical focus, the local markets where the combined firm would hold an increased total of CMRS spectrum are addressed in part II (B) below.

Markets for air-to-ground service (where GTE participates, but Bell Atlantic does not) and for paging services (which are vigorously competitive, see Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 12 Comm. Reg. (P&F) 623 (1998) ("Competition Report")) are not discussed further here.

The integrated larger network will make possible systemwide efficiencies (uniform engineering and management, common purchasing), and faster, more uniform, and more stable deployment of advanced technologies. Wider calling scopes become cheaper and more reliable as their dependency on roaming agreements with other providers diminishes. The Commission has recognized that such integration of wireless operations produces important public-interest benefits. See SBC-PacTel ¶ 72; Bell Atlantic Mobile-NYNEX Mobile, 10 F.C.C.R. 13,368 ¶ 48 (1995); Corpus Christi Cellular Tel. Co., 3 F.C.C.R. 1889 (1988); see also Competition Report. These benefits are of particular competitive importance now that several wireless providers are national or almost national in scope and the wireless marketplace is becoming crowded with vigorous competitors.¹⁶

G. Substantial Synergies Make The Pro-competitive Benefits Possible

The merger also will produce substantial synergies — in the form of both cost savings and enhanced revenue opportunities — that will free up the resources needed to produce the benefits described above. These are the same kinds of synergies that the Commission recently relied upon in approving the merger of MCI and WorldCom, concluding, for example, that the merger “will allow them to service multi-location customers over their own networks, and that this will enable such customers to receive higher quality and more reliable services than each company is currently able to offer separately.” WorldCom-MCI ¶ 199.¹⁷

¹⁶ See Shawn Young, BA/GTE Deal Seen Creating Wireless Mammoth, Dow Jones News Service, July 28, 1998 (“The merged company . . . could use its scale to cut costs, a potentially critical advantage in a crowded wireless market where prices are dropping so companies must stay lean to stay alive.”).

¹⁷ See also WorldCom/MCI Joint Reply at 12, 31, 33 (advancing such resource synergies to support merger).

Applicants have estimated — and the officers responsible for the various segments of the business will have to commit themselves and their compensation to achieving — substantial synergies from this merger. The cost reductions — from eliminating duplicative staff and information and operation systems, reducing procurement costs, and more efficiently using long-distance capabilities — are estimated to reach \$2 billion annually by the third year after closing. The revenue enhancements — from creating and more widely deploying innovative data and other services, improving the value and speeding the widespread deployment of long-distance offerings, and the spreading of best practices to more efficiently market existing services — are estimated to be an additional \$2 billion in the third year after closing. Additional capital savings of \$0.5 billion are estimated. See Declaration of Doreen Toben.

The merger also makes other benefits to consumers possible by spreading each company's best practices to the entire new merged company. Bell Atlantic's strengths will be spread to GTE's customers, and GTE's strengths will be spread to Bell Atlantic's.

There are compelling reasons to rely on these prospective benefits:

First, the Commission itself has recognized that a merger of two large, noncompeting local exchange carriers can result in savings through elimination of duplicative operations in wide areas of the companies' business, such as management, customer billing and related services, and research and development. SBC-PacTel ¶ 76. Likewise, the Commission has recognized the benefits of combining largely complementary wireless operations, and acknowledged that "the efficiencies in management and uniform marketing, pricing and sales would be practically impossible without a merger." Bell Atlantic-NYNEX Mobile ¶ 46.

Second, independent analysts — with both money and reputations on the line — have confirmed the existence of opportunities to produce substantial savings and the reasonableness of the synergy levels that the companies have projected.¹⁸

Third, the ability of the two companies to achieve such synergies is confirmed by actual experience. For example, only one year after its formation, Bell Atlantic NYNEX Mobile had become the industry's low cost provider, and its performance has continued to improve since.¹⁹ Still more recently, the experience with the Bell Atlantic-NYNEX merger has reconfirmed that such savings are real: the very substantial cost savings estimated at the time of the transaction have been achieved since the companies have merged. See Declaration of Doreen Toben.²⁰

¹⁸ See Scheisel, Mapping the Telecommunications Scene, N.Y. Times, Aug. 2, 1998, p. BU4 (interview with Michael Mahoney, manager of AIM Global Telecommunications fund: "the structure of the U.S. industry is somewhat inefficient. It's a lot like the banking industry, where for regulatory reasons, a historical accident, you end up with a number of organizations where a smaller number would be more efficient. . . . They're talking about \$2 billion in cost synergies for Bell Atlantic and GTE, and that's pretty reasonable."); Nationsbanc Montgomery, Bell Atlantic, Inc., July 29, 1998 ("We estimate that revenue and cost synergies should ramp to \$4 billion on an annual basis by year three after the merger."); J.P. Morgan Securities Inc., BEL and GTE Agree To A Merger Of Equals — Attractive Upside Potential & Limited Downside, July 29, 1998 ("With effective execution, the two companies should be able to generate the \$2 billion of revenue and \$2 billion of cost synergies identified by management.").

¹⁹ See Application for Transfer of Control, Bell Atlantic-NYNEX, File No. NSD-L-96-10, Exhibit B at 3 (and authorities cited therein); Nationsbanc Montgomery, Bell Atlantic Corporation, July 23, 1998. ("Domestic Bell Atlantic Mobile (BAM) subscribers grew more than 17% over second quarter 1997 Revenue per customer declined 4.0% to \$51.89 as cash expenses per customer declined an impressive 13.2% to \$24.2. This is the lowest cash expense per customer ever reported by BAM. Acquisition cost per additional customer also fell sharply, by 17.1%, reflecting the improving productivity of BAM's direct and indirect sales channels as well as lower handset costs.").

²⁰ See also, e.g., Id. ("Merger cost synergies are on schedule to release \$450 million in 1998 savings to Bell Atlantic that management can use immediately to enhance earnings growth, or reinvest in growth initiatives that will result in strong benefits in future periods. We are confident that Bell Atlantic will have in excess of \$750 million in 1999 synergies."); Joel I. Klein, Making the Transition from Regulation to Competition, Jan. 21, 1998 ("the evidence

Fourth, other participants in the marketplace recognize these points as well. For example, WorldCom and MCI recently relied on comparable savings and synergies to support their merger. See WorldCom-MCI ¶¶ 194-195. Indeed, those parties explained that the "combined company will achieve significant cost savings and efficiencies," and the "increased scale of activities in the combined company's operations will result in opportunities to reduce costs by avoiding expenditures on duplicative activities, greater purchasing power, and the adoption of best practices in cost containment." See WorldCom/MCI Joint Reply at 12 (internal quotes omitted). As a result, "[a]pproval of the proposed transaction will enhance competition by increasing the resources, facilities, and personnel available to the combined company and [by] allowing it to take optimal advantage of operational synergies, cost savings, and complementary service offerings." Id. at 31 (internal quotes omitted). The same is true here.

In sum, both a solid track record and internal incentives stand behind the estimates of synergy benefits to be achieved through this merger, which are of a kind the Commission and competitors have recognized to be real.

II. THE MERGER DOES NOT LESSEN COMPETITION

The pro-consumer, pro-competition benefits of the merger are substantial. On the other hand, there are no substantial countervailing concerns about lessened competition. Any concerns about lost potential local-service competition are insubstantial, both by themselves and weighed against the pro-competitive benefits of the merger. And any wireless overlaps that are not permitted by the Commission's rules will be eliminated.

indicated that real efficiencies were likely to result from the merger — some of which have already been realized — and that, over time, those efficiencies would lead to better service in the affected areas").

A. Local Services

In Bell Atlantic-NYNEX, the Commission found that, without imposition of certain conditions, the merger raised a competitive concern in certain local-service markets. In the present case, as already explained, the merger has powerful pro-competitive benefits for local-services competition. It makes possible entry into other Bell companies' service areas; and even within current Bell Atlantic and GTE areas, the improvement of services is itself pro-competitive. Against the prospect of those pro-competitive benefits, there is no significant countervailing negative competitive concern.²¹

The basic fact is that the existing local service areas of the two companies do not overlap, and there is no actual local-service competition between Bell Atlantic and GTE. The merger, therefore, does not reduce competition that exists today, and the only issue is one of potential competition. That issue is itself limited to the Pennsylvania and Virginia areas where GTE has franchises in rural and suburban areas with (populations of about 600,000 in Pennsylvania and 700,000 in Virginia) near Bell Atlantic franchises.²² But, for those areas, the merger does not

²¹ While the Applicants include an analysis of the merger's impact on all relevant markets, they nevertheless preserve three contentions. First, under the Communications Act, the Commission's authority to review the merger's impact on local telecommunications markets is limited by the jurisdictional constraints of section 2(b) of the Act, 47 U.S.C. § 152(b). Second, its authority to review a transfer of licenses or certificates is properly limited to assessing the interstate uses of those particular licenses or certificates, and does not extend to other aspects of the merger. Third, to the extent the Commission has authority to enforce section 7 of the Clayton Act with respect to interstate matters, paragraph 4 of that provision contains an express exemption where, as here, one common carrier extends its lines by acquiring another common carrier, as long as "there is no substantial competition between" the two carriers overall. See Navajo Terminals, Inc., v. United States, 620 F.2d 594, 601 ((7th Cir. 1979).

²² The Commission has noted that local geographic markets may be analyzed separately when customers face different competitive choices and prospects. See AT&T-TCG ¶ 21. As in Bell Atlantic-NYNEX, the only areas warranting separate discussion are those where Bell Atlantic and GTE have nearby service areas. In GTE's local-service territories outside the

present a cognizable problem of lost potential competition because it does not deprive any local-service market of a substantial competitive force unavailable from other firms. See, e.g., Bell Atlantic-NYNEX ¶¶ 138-139.²³

Neither company is a "perceived" potential competitor of the other having a present impact on the incumbent's market behavior. See Declaration of Hugh Stallard; Declaration of Jeffrey Kissel. The issue, therefore, is only whether analysis under the "actual potential competition" doctrine identifies a meaningful anticompetitive effect from eliminating the possibility that either firm will enter the other's local-service territory. See WorldCom-MCI & 20 (noting that Commission's "analytical framework . . . reflects the values of, and builds upon, the 'actual potential competition' doctrine established in antitrust case law"). There is no such anticompetitive effect.

This analysis must proceed with caution, for reasons that have placed the actual potential-competition doctrine at the outer reaches of competition law. The doctrine requires multiple predictions about what firms will enter, at what times, in what market segments, and at what

Northeast — in, for example, Los Angeles, Dallas, Tampa, or the outskirts of Seattle — there is no basis for any conclusion that Bell Atlantic, on its own, would be an entrant at all, let alone an economically significant one. There is likewise no colorable basis for suggesting that GTE might be an economically significant entrant into Bell Atlantic service areas distant from GTE franchise areas.

²³ If the market is not concentrated, no market harm occurs from loss of a mere potential entrant. In a concentrated market, the 1984 Vertical Merger Guidelines contemplate the possibility of market harm in two different situations: "perceived potential competition"; "actual [i.e., non-perceived but actual] potential competition." §§ 4.111, 4.112. The former involves loss of a present competitive constraint, for it applies when the market incumbent is actually influenced in its current pricing and other decisions by the perception that the other firm is one of only a few potential entrants. The latter doctrine aims at projected loss of a future competitive improvement: it applies when, despite lack of perception by the market incumbent, the other firm is actually a likely future entrant that, because it is nearly unique, would play an otherwise-unavailable competitive role in the market.

scale; and if the market participants do not "perceive" the potential competition, any regulatory prediction of an economically significant effect must, by definition, be contrary to the assessments of the current market participants with money on the line. In light of the high degree of speculation and low degree of reliability involved (compared to the usual inquiry into competitive effects of eliminating existing competition), the Supreme Court has several times reserved the question of the doctrine's validity in antitrust law,²⁴ the doctrine has often been narrowed by insisting on actual company-adopted and funded plans for entry,²⁵ and there appears to be no case in which the actual potential competition doctrine has been sustained as the basis for blocking a merger among "non-perceived" potential competitors.²⁶ Because the

²⁴ United States v. Marine Bancorporation, 418 U.S. 602, 639 (1974); United States v. Falstaff Brewing Corp., 410 U.S. 526, 537-38 (1973); see also Tenneco, Inc. v. FTC, 689 F.2d 346, 352 (2d Cir. 1982).

²⁵ "[I]t is essential to distinguish between the views and actions of those in the . . . organization who were charged with decision making responsibility, and those whose function it was to make preliminary studies and recommendations" United States v. Penn-Olin Chem. Co., 246 F. Supp. 917, 919 (D. Del. 1965), aff'd, 389 U.S. 308 (1967); see United States v. Siemens, 621 F.2d 499, 508 (2d Cir. 1980); In re R.R. Donnelley, 5 Trade Reg. Rep. (CCH) ¶ 23,876, at p. 23,663 (FTC 1995); In re B.A.T. Indus., Ltd., 104 F.T.C. 852, 930 (1984) (relied on in SBC-PacTel n.45); cf. 1984 Merger Guidelines § 4.133 n.28.

²⁶ Application of the doctrine has been rejected in case after case. E.g., Tenneco, supra; Siemens, supra; Penn-Olin, supra; FTC v. Atlantic Richfield Co., 549 F.2d 289 (4th Cir. 1977); Merantile Texas Corp. v. Board of Governors, 638 F.2d 1255 (5th Cir. 1981); see ABA Antitrust Section, Antitrust Law Developments 342-50 (4th ed. 1997). The doctrine was cited to support the FTC's blocking of a merger in Yamaha Motor Co. v. FTC, 657 F.2d 971 (8th Cir. 1981), cert. denied, 456 U.S. 915 (1982), but the potential entrant was clearly a perceived potential competitor having present market impact. Id. at 975; see also In re Brunswick Corp., 94 F.T.C. 1174, 1273-74 (1979); United States v. Phillips Petroleum Co., 367 F. Supp. 1226 (C.D. Cal. 1973), aff'd, 418 U.S. 906 (1974). The FTC, for its part, has regularly rejected application of the doctrine (e.g., R.R. Donnelley, supra; B.A.T. Indus., supra), and it is hard to find any modern contested case where the FTC has rested liability entirely on the doctrine (where, for example, the potential competitor was not a "perceived" threat having present market impact), except where it was overturned in the courts.

Commission's approach is built on, though not strictly constrained by, this doctrine (WorldCom-MCI ¶ 20; Bell Atlantic-NYNEX ¶¶ 138-139), its recognized difficulties supply strong reason to exercise skepticism before relying on the needed predictions to block an otherwise pro-consumer merger.

The fundamental requirement for the doctrine's application (even before weighing offsetting benefits) is a well-grounded finding that one of the merging firms "in the near future" would, but for the merger, supply significant competition against the other that would not be forthcoming from other present or potential market participants. See WorldCom-MCI ¶ 20.²⁷ No such finding can be made in this case — in sharp contrast to Bell Atlantic-NYNEX, the most recent order to analyze a merger between two large incumbent local exchange carriers. There, the Commission narrowed its focus to the local-services mass market and emphasized three factors in assessing the likelihood of entry: the two companies had "a major center of population and telecommunications on their border" with physical facilities already present and able to serve customers; established relationships with telecommunications customers (both to build on and to protect against loss); and recognized brand name (including reputation for strong service) in the other's territory. Bell Atlantic-NYNEX ¶¶ 62, 69, 132; see also SBC-PacTel ¶ 24. And while the Commission recognized that the three most important entrants were the large long-distance carriers who already have customers, facilities, and reputation (Bell Atlantic-NYNEX ¶ 82), it nonetheless concluded that, because of the unique circumstances there, Bell Atlantic "would have been most likely to target mass market, not large business, customers" (id. ¶ 73). In the present case, by contrast, the threshold findings cannot be made.

²⁷ Such a distinctive role is the logical precondition to any finding of anticompetitive unilateral effects or coordinated action.

1. GTE Entry Into Bell Atlantic's Markets

There is no reason to think that GTE would be a significant entrant into Bell Atlantic's current local-service markets (whether for the mass market or for larger businesses, see WorldCom-MCI ¶ 164), even in Pennsylvania or Virginia. It has no special set of advantages over other CLECs such that its removal as a potential competitor — which it has no relevant plans to be — would reduce the overall competitive pressure on Bell Atlantic. In particular, it has no significant facilities (to use) or customer relationships (to build on or to protect), and lacking a current substantial presence, it is unlikely to have a distinctively strong brand reputation. The long-distance carriers possess all three assets. A raft of CLECs targeting narrower classes of customers also have a strong head start. And unlike even a year ago, cable companies have now actually begun to offer vigorous high-speed data competition. In this developing marketplace, GTE cannot stand out.

Even today, Bell Atlantic is already facing extensive competition in Pennsylvania and Virginia. In Pennsylvania, Bell Atlantic faces 51 certified CLECs (another 51 are pending). It has 29 facilities-based interconnection agreements signed (13 approved) and another 46 resale agreements (11 approved). It has 76,000 resale lines in service, has sold 20,000 unbundled loops, furnished 21,000 ported numbers, provided 60,000 interconnection trunks to CLECs (running in one direction or the other), and competitors have in place an estimated 145,000 facilities-based lines. See Declaration of Daniel Whelan.

In Virginia, Bell Atlantic faces 54 certified CLECs (12 more are pending) and has 30 facilities-based interconnection agreements (22 approved) and 30 resale agreements (17 approved) with CLECs. It has provided almost 11,000 resale lines, has sold about 600 unbundled loops, has provided about 4,000 ported numbers (generally indicating service by a

CLEC's own switch), has furnished more than 15,000 interconnection trunks to CLECs (in one direction or the other), and competitors have in place an estimated 40,000 facilities-based lines. See Declaration of Hugh Stallard.

GTE has entered into essentially pro forma interconnection agreements with Bell Atlantic in Virginia and Pennsylvania — agreements whose content is simply borrowed from agreements negotiated by others. Unlike the many other CLECs that have actually entered these markets, however, GTE has taken no steps to compete. See Declaration of Jeffrey Kissell. It is simply unreasonable to conjecture that GTE, even if it had relevant plans, would supply competitive pressure that Bell Atlantic otherwise would not face from AT&T, MCI WorldCom, Sprint, NEXTLINK, e.Spire, Winstar, RCN, Teligent, and the many other CLECs that have already entered.

Not surprisingly, then, GTE has exceedingly limited "plans" for competitive entry into Bell Atlantic's local-service markets. Consumers have not been targeted. Small businesses have been targeted by GTE's CLEC affiliate in select areas near to the more urban parts of GTE's franchise areas in states served by other Bell companies, but not in Virginia and Pennsylvania. GTE's overall plans for service in Virginia and Pennsylvania outside its franchise area are limited to following a small number of "strategic accounts" derived from its franchise areas, and even as to them, GTE plans only to offer frame relay service, not local telephone service. Moreover, GTE has no plans to sell local service to the small number of out-of-franchise long-distance customers it has in Virginia and Pennsylvania.²⁸ The overall economics of near-term CLEC entry in these areas, even by resale, are too unattractive. See Declaration of Jeffrey Kissell. In

²⁸ See Nationsbank Montgomery, Bell Atlantic, Inc., July 29, 1998 ("Only 1% of GTE's long distance customers are domiciled in Bell Atlantic's territory.")

short, GTE's "plans" and likely role in Bell Atlantic's service areas in Virginia and Pennsylvania are, in the terms of any potential competition analysis, simply not significant.

2. Bell Atlantic Entry Into GTE's Markets

For a different mix of reasons, a conjectured economically important role for Bell Atlantic in GTE's predominantly rural or suburban and dispersed service territories is likewise unlikely, and Bell Atlantic has no relevant plans to undertake such a role.

Indeed, the economics of entry into such areas have proven too unfavorable to expect substantial entry on a large scale by any competitor in the near term, and this is all the more true in the case of Bell Atlantic, which is faced with other higher priorities and more attractive opportunities (such as providing long distance to its existing in-region customers). While some highly targeted entry to serve select business customers in the larger-business segment of these markets may occur, there is no reason to single out Bell Atlantic as important for that purpose; indeed, existing CLECs with fewer competing priorities are more likely competitors. The net result is that there is no local-service market segment in which Bell Atlantic, without useful on-site facilities or existing customer relationships, is likely to play an economically significant, otherwise-unavailable role.

In the mass market (which was the focus of the Commission's concern in Bell Atlantic-NYNEX), the experience of the last several years has changed original expectations and taught the economic difficulty of mass market entry, particularly in less dense rural and suburban areas. Although Bell Atlantic presumably has a recognizable brand, it lacks the most immediately important assets: actual customer relationships (to protect and to build on) and existing on-site facilities, which the long-distance carriers already have. As a result, mass-market entry by Bell Atlantic into GTE's service areas is unattractive, especially relative to other opportunities.

In the business market, which is in any event very small in GTE's rural and suburban areas, an economically significant role for Bell Atlantic is likewise implausible. For business customers, new CLECs can as readily make the choice to sell services as can Bell Atlantic, perhaps more readily, given real-world freedom from obligations to serve all comers. See AT&T-TCG ¶ 39 (for large business customers, mass-market reputation and brand name, and even scale for access to capital, "appear less essential for successful entry"); Bell Atlantic-NYNEX ¶ 53 (even medium-sized business "are targeted by specialized firms that do not necessarily seek to address the mass market"). At the same time, the substantially more vigorous competitive threat to urban areas faced by Bell Atlantic requires it to concentrate its resources on improving service and otherwise competing to hold onto its lower-cost, higher-revenue customers there.²⁹

For those reasons, Bell Atlantic has shown exceedingly little interest in the past several years in any competitive activities in GTE's territory in Virginia or Pennsylvania: it has not even sought certification to provide local service, but has considered only selected "rifle shot" opportunities not requiring such certification.³⁰ Several years ago, some Bell Atlantic managers

²⁹ See Notice of Proposed Rulemaking, Price Cap Performance Review for Local Exchange Carriers, 9 F.C.C.R. 1687, 1706 (1994) ("Competition in local exchange access services is likely to develop unevenly. This in turn may encourage price cap LECs to direct repair, maintenance, introduction of new services and features, and other efforts toward downtown businesses and affluent residential customers."); Shawn Burke, Bell Atlantic Corp. To Merge With GTE Corp., PaineWebber Fixed Income, July 29, 1998 (stressing Bell Atlantic's focus "on its basic backyard telephone and wireless units").

³⁰ At Dulles International Airport, which is in GTE's service area, Bell Atlantic, which has a facility located nearby (at Horsepen Road), has pursued select opportunities (to sell to the airport authority that operates Dulles) that might be available without CLEC certification, such as a pay-telephone contract, limited SONET-based services, and a private Airport Communications System. In Virginia Beach, Virginia, the service territories of Bell Atlantic and GTE adjoin. Bell Atlantic, while not making any plans, has discussed with Cox

took a rosy view of the prospects for entry into "independent" areas in Bell Atlantic's service territory, essentially as a resale adjunct to a statewide long-distance offering. Experience during the last two years has substantially altered that view, which never went beyond the paper-analysis stage. That prior view always assumed that a resold local service would be offered only if it was preceded by a successful long distance offering. But in close by out-of-region markets where Bell Atlantic has offered long distance since the Act was passed, such as North Carolina, its long distance offering has been anything but successful. As a result, when Bell Atlantic is authorized to enter the long-distance market, it plans to offer long-distance service statewide, but its overwhelming focus will be on selling to its existing customer base. Although Bell Atlantic may obtain long-distance customers in GTE's territories, there is no present expectation of making concerted efforts to seek such customers, and the theoretical possibility that the long-distance service might be bundled with a resold local service is not even attractive enough to be the subject of active study, let alone of adopted (or even drafted) plans. See Declaration of Hugh Stallard.³¹

In short, a prediction of losing an otherwise-unavailable role for Bell Atlantic could not soundly be based on "'probabilities' not 'ephemeral possibilities.'" SBC Communications Inc. v. FCC, 56 F.3d 1484, 1494 (D.C. Cir. 1995) (affirming McCaw Order, 9 F.C.C.R. 5836 (1994)). The merger will therefore produce significant local competition benefits at no material cost.

Communications the possibility of a partnership to use Cox's fiber facilities to serve the city government's several offices, some of which are in Bell Atlantic's territory and some in GTE's. See Declaration of Hugh Stallard.

³¹ In any event, as noted, even if such an offering were to materialize, it would not be a competitively significant force in the marketplace. See Declaration of Hugh Stallard.